

The Honorable John C. Coughenour  
The Honorable Marsha Pechman  
The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LUIS TORRES, Individually and on behalf of  
all others similarly situated,

Plaintiff,

vs.

MICROSOFT CORPORATION, a Washington  
Corporation,

Defendant.

No. 07-CV-1121 JCC

Hon. John C. Coughenour

DECLARATION OF RICHARD L.  
KELLNER IN SUPPORT OF  
DESIGNATION OF KABATECK  
BROWN KELLNER AS INTERIM  
COUNSEL FOR THE PUTATIVE  
CLASS PURSUANT TO FED.R.CIV.P.  
23(g)(2)(A)

STEVE CARLIE, Individually and On Behalf  
of All Others Similarly Situated,

Plaintiff,

vs.

MICROSOFT CORPORATION, a Washington  
Corporation,

Defendant.

No. 07-CV-1132 CMP

Hon. Marsha J. Pechman

[Caption continues on next page.]

DECLARATION OF RICHARD L. KELLNER IN  
SUPPORT OF DESIGNATION OF KABATECK BROWN  
KELLNER AS INTERIM COUNSEL FOR THE  
PUTATIVE CLASS PURSUANT TO FED.R.CIV.P.  
23(g)(2)(A)

Case No. CV07-1121; Page 1 of 5

CHRISTINE MOSKOWITZ and DAVID  
WOOD, Individually and on behalf of all others  
similarly situated,

Plaintiffs,

vs.

MICROSOFT CORPORATION, a Washington  
Corporation,

Defendant.

No. 07-CV-1270

Hon. John C. Coughenour

Heidi Ling, as parent and natural guardian of  
Robert Ling, III, Individually and on behalf of  
all others similarly situated,

Plaintiff,

vs.

MICROSOFT CORPORATION, a  
Washington Corporation,

Defendant.

No. 07-CV-1271

Hon. James L. Robart

# **DECLARATION OF RICHARD L. KELLNER, ESQ.**

I, Richard L. Kellner, declare as follows:

1. I submit this declaration in support of the motion by Plaintiffs in the above-captioned actions to appoint the firms of Stritmatter Kessler Whelan Coluccio, Chitwood Harley Harnes, LLP, The Hodkin Kopelowitz Ostrow Firm, P.A., Kabateck Brown Kellner LLP, Keller Rohrbach LLP, Krause Kalfayan Benink and Slavens, LLP, and Wasserman Comden & Casselman, LLC as interim counsel to act on behalf of the putative class pursuant to Fed.R.Civ.P. 23(g)(2)(A). I have personal knowledge of the following facts and could and would competently testify thereto if called upon to do so.

DECLARATION OF RICHARD L. KELLNER IN  
SUPPORT OF DESIGNATION OF KABATECK BROWN  
KELLNER AS INTERIM COUNSEL FOR THE  
PUTATIVE CLASS PURSUANT TO FED.R.CIV.P.

23(g)(2)(A)

Case No. CV07-1121; Page 2 of 5

1           2.       I am an attorney duly licensed to practice law in the states of California, Florida,  
2 Nevada and New York. I am a partner in the law firm Kabateck Brown Kellner, LLP ("KBK"),  
3 counsel for plaintiff in the matter captioned *Torres v. Microsoft Corporation* (Case Docket No.  
4 07-CV-1121).

5           3.       KBK has done significant work in identifying and investigating potential claims  
6 in this action. We have conducted months of factual research into the problem of Microsoft  
7 Corporation's Xbox 360 gaming consoles, including specifically the fact that the Xbox 360s  
8 have had and continue to have a problem with scratching and ruining game disks and other  
9 optical media loaded into the Xbox 360's included DVD-drive. We have performed extensive  
10 legal research in determining what causes of action these underlying facts will support as well as  
11 whether or not a class can be certified in this matter. We have expended significant time  
12 responding to inquiries from potential members of the putative class and interviewing  
13 prospective representative plaintiffs.

14           4.       KBK's attorneys have successfully litigated dozens of class action lawsuits.  
15 Recent experience includes the following:

16           (a)       KBK's attorneys obtained a \$20,000,000 settlement of the class action titled  
17 *Marootian, et al. v. New York Life Insurance Company*, Case No. CV-99-12073 (U.S.D.C.,  
18 Central Dist. CA), in which the plaintiffs alleged that New York Life Insurance Company failed  
19 to pay benefits under life insurance policies it issued in the Turkish Ottoman Empire on the lives  
20 of persons of Armenian descent.

21           (b)       In *Borrayo, et al. v. Carlton Forge Works*, L.A.S.C. Case No. BC 298858, KBK's  
22 attorneys obtained a settlement that fully compensated a class of 244 employees who were not  
23 paid overtime wages which were owed for time worked on an alternative work week schedule.

24           (c)       KBK was co-lead counsel in *Epson Ink Cartridge Cases*, L.A.S.C. Case No. BC  
25 293641 and S.F.S.C. Case No. CGC-03-425588, which involved a nationwide class of  
26 consumers whose Epson printer cartridges were defined by printer software as being empty

1 when, in fact, they still contained a substantial amount of ink. The settlement was approved on  
2 August 15, 2006 by the Superior Court of the State of California for the County of Los Angeles.

3 (d) KBK is co-lead counsel in *Checkmate v. Yahoo!, Inc.*, U.S. District Court, Case  
4 No. CV-05-4588 (U.S.D.C., Central Dist. CA), which alleges that defendants improperly  
5 charged its pay-per-click internet advertising clients for fraudulent website "clicks" by third  
6 parties. The class action settlement was approved on March 26, 2007.

7 (e) KBK is co-lead counsel in *Hurtado v. TEG/LVI, Environmental Services Inc.*,  
8 LASC Case No. BC 276468, a class action for unpaid wages. The case was settled and final  
9 approval of the class action settlement was granted on April 13, 2007.

10 (f) KBK is lead counsel in *Hoffman v. Soloman, et al.*, RCSC Case No. NC R396453,  
11 a breach of contract case between a class of over 200 home buyers and a home developer. The  
12 class action was settled and final approval was granted on June 26, 2007.

13 (g) KBK is lead counsel in *Balandran, et al. v. Labor Ready, Inc., et al.*, L.A.S.C.  
14 Case No. BC 278551, an employment discrimination class action involving more than 200  
15 women. The case was settled and final approval of the class action settlement was granted on  
16 August 6, 2007.

17 (h) KBK is co-lead counsel in *Harrison, et al. v. Pacific Bay Properties, et al.*,  
18 L.A.S.C. Case No. BC 285320, a certified construction defect class action. A settlement has  
19 been reached by the parties and is pending preliminary approval.

20 (i) KBK is co-lead counsel in *Alba, et al. v. Papa John's USA, Inc. et al.*, U.S.  
21 District Court, Case No. CV-05-7487 (U.S.D.C., Central Dist. CA), a wage and hour suit  
22 involving more than 900 possible plaintiffs who worked at Papa John's pizzerias. The class was  
23 certified by the United States District Court on February 8, 2007 and trial is scheduled for  
24 November 6, 2007.

25 (j) KBK was co-counsel in *Ray v. Microsoft Corporation*, U.S. District Court, Case  
26 No. CV-06-1720 (U.S.D.C., Western Dist. WA), a putative class action against defendant

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23(g)(2)(A)

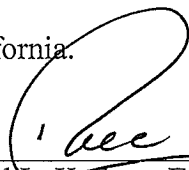
Case No. CV07-1121; Page 4 of 5

1 Microsoft Corporation stemming from a different problem with the Xbox 360 gaming console.  
2 Industry analysts are practically unanimous in their view that this litigation was the catalyst  
3 behind Microsoft's sudden announcement in late December of 2006 to extend the warranty on  
4 Xbox 360s from ninety days to a full year.

5 5. The partners of KBK have collectively tried over 100 cases and have handled  
6 over 100 appeals.

7 I declare under penalty of perjury under the laws of the United States of America that the  
8 foregoing is true and correct.

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10 Executed on August 17, 2007, at Los Angeles, California.

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13 Richard L. Kellner, Esq.  
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Case No. CV07-1121; Page 5 of 5